Supreme Court, U.S.
FILED
OCT 11 1988
JOSEPH F. SPANIOL, JR.
CLERK

(2)

No. 88-438

In the Supreme Court of the United States

OCTOBER TERM, 1988

LANCE R. DOZIER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that the court of appeals erred in its review of a district court order admitting evidence that petitioner had moved to suppress.

1. On December 6, 1985, a grand jury sitting in the United States District Court for the Eastern District of California returned a three-count indictment against petitioner and his wife. The indictment charged the two defendants with conspiracy to manufacture and distribute marijuana, possession of marijuana with intent to distribute it, and possession of cocaine with intent to distribute it, in violation of 21 U.S.C. 841(a)(1) and 846. On July 22, 1986, petitioner entered a conditional plea of guilty to possessing marijuana with intent to distribute it (Pet. 5-6).

Before entering the guilty plea, petitioner moved to suppress the evidence that had been seized from his residence.

The evidence had been seized under the authority of a search warrant that had been obtained based on an affidavit of Drug Enforcement Agent Daniel Offield (Pet. App. 3). In his motion to suppress, petitioner alleged that there was no probable cause to issue the warrant, that law enforcement officials had acted in reckless disregard for the truth in preparing the affidavit, and that the warrant was facially overbroad. The district court held a hearing on the motion pursuant to *Franks* v. *Delaware,* 438 U.S. 154 (1978), to determine the veracity of the statements in the affidavit. After the hearing, the court ruled that although there were misstatements in Offield's affidavit, they were neither intentional nor made with reckless disregard for the truth. The court further ruled that there was ample evidence in the affidavit to sustain the warrant after the redaction of the false statements in question. Finally, insofar as the warrant contained an overbroad description of the items to be seized, the district court held that the evidence was admissible under the "good faith" exception to the exclusionary rule. See *United States* v. *Leon,* 468 U.S. 897 (1984).

On appeal, the court of appeals upheld the district court's finding that Agent Offield's statements in the affidavit reflected neither knowing nor reckless disregard for the truth. In addition, the court concluded that the redacted affidavit established probable cause, and that the district court had properly limited the *Franks* v. *Delaware, supra,* hearing to the testimony of Offield. With respect to the evidence seized under the overbroad portions of the warrant, however, the court of appeals concluded that that evidence should have been suppressed because the executing officers could not have reasonably relied on the validity of those portions of the warrant. Accordingly, the court of appeals affirmed in part, reversed in part, and remanded the case to the district court for further proceedings (Pet. App. 1-14).

2. Petitioner contends (Pet. 8-13) that the issue whether false statements or omissions in an affidavit for a search warrant are intentional or reckless is subject to de novo review by the court of appeals, and that affirmance of the district court's finding on that issue was in error under any standard of review. Petitioner also contends (Pet. 13-17) that the redacted affidavit for the search warrant did not support a finding of probable cause. Whatever the merits of petitioner's contentions, however, they are not presently ripe for review by this Court. *Brotherhood of Locomotive Firemen* v. *Bangor & A.R.R.*, 389 U.S. 327, 238 (1967). In ruling that the documentary evidence should have been suppressed, the court of appeals set aside petitioner's conviction and remanded the case for further proceedings. Petitioner will be able to withdraw his plea of guilty, and if he is acquitted following a trial on the merits, his contentions will be moot. If, on the other hand, petitioner is convicted and his conviction is affirmed on appeal, he will then be able to present his current contentions to this Court, together with any other claims he may have, in a petition for a writ of certiorari seeking review of a final judgment against him. Accordingly, review by this Court of the court of appeals' decision would be premature at this time.*

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Solicitor General

OCTOBER 1988

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* Because this case is interlocutory, we are not responding on the merits to the question presented by the petition. We will file a response on the merits if the Court requests.

☆ U.S. GOVERNMENT PRINTING OFFICE: 1988—241 699/60702